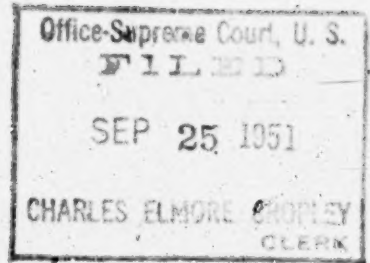


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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 224

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA,
CAPITAL TRANSIT COMPANY, AND WASHINGTON TRANSIT
RADIO, INC., *Petitioners,*

-v-

FRANKLIN S. POLLAK AND GUY MARTIN, *Respondents*

RESPONDENTS' OBJECTION TO MOTION FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE

The respondents, Franklin S. Pollak and Guy Martin, objecting to the motion filed on behalf of Radio Cincinnati, Inc., KXOK, Inc., and KCMO Broadcasting Company for leave to file a brief as *amici curiae* in support of the petition for writ of certiorari, say:

1. The motion does not allege that any fact or question of law was not adequately presented by the parties below; it does not allege any reason for believing that any fact or question of law will not be adequately presented by the parties here; and it contains nothing which would support

these allegations, had they been made. In particular, it does not suggest that the petitioners herein are not represented by competent counsel, qualified fully to present all relevant questions of fact or law. Rule 27, ¶9(c); *Northern Securities Company v. United States*, 191 U. S. 555.

2. The allegation that a decision by this Court in this case "will have direct implications" on the rights of the moving parties is one that can be made with equal truth by one person or many in innumerable cases in this Court. It cannot be sufficient under Rule 27, ¶9(c), if that provision is to have any real effect.

3. The statement in the motion that the due process clauses of the Fifth and Fourteenth Amendments are "similar" and the questions under them "closely related" is nothing more than a step toward the conclusion that the moving parties will be affected by the Court's decision here, which is not enough. The intimation, if there is one, that in substance the two clauses are relevantly different¹ is even further from meeting the requirements of the Rule, because if that is true the effect of this case on the moving parties will have to be settled in another case and they are not entitled to argue differences here.

4. The granting of leave to file a brief *amicus curiae* to any of the present moving parties would as a matter of precedent suggest that the same opportunity should be given to more than twenty other corporations with equivalent status. In addition to Cincinnati, St. Louis and Kansas City, there are similar transit radio operations in nine

¹ The moving parties state in substance (page 3) that they should be given an opportunity to show the bearing of this case "on their rights and on the rights of millions of bus riders throughout the country" under the *Fourteenth Amendment* because "the petitioners . . . are primarily concerned *only* with rights and interests of District of Columbia bus riders under the *Fifth Amendment*". (Italics ours).

other cities,² each involving an FM broadcasting station and a transportation company, each of whom, plus the transportation companies in the cities of the present moving parties, would be equally entitled to file briefs. Moreover, any of these—the moving parties or others—who might be granted permission to file briefs as *amici* at this stage would be in a position to argue that on that very ground they should be permitted to file briefs on the merits if certiorari is granted.

5. We believe that ¶9(c) of Rule 27 was adopted for the protection of litigants as well as for the protection of the Court. One of its purposes, plainly, is to protect litigants from having to deal with numerous briefs presented by persons not parties except in the situation which is expressly specified—namely, when relevant questions of fact or law will not be adequately presented by the parties themselves. Because we believe that situation does not exist here we have refused our consent under Rule 27 and now object to the motion.

Respectfully submitted,

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Attorney pro se.

September 25, 1951.

² The latest data available to us show that transit radio is in operation in thirteen cities, including Washington (Broadcasting Marketbook, August 20, 1951, page 8E).